

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ENCOMPASS INSURANCE COMPANY OF
MASSACHUSETTS,

Plaintiff,

vs.

JOSEPH D. GIAMPA, FREDERICK T.
GIAMPA, ADVANCED SPINE CENTERS,
INC., d/b/a FIRST SPINE REHAB, FUTURE
MANAGEMENT CORPORATION, FUTURE
MANAGEMENT BUSINESS TRUST,
EDWARD KENNEDY, BRIAN J.
CULLINEY, D.C. and JENNIFER
McCONNELL, D.C.

Defendants.

Civil Action No. 1:05-cv-11693-RCL

**MOTION TO WITHDRAW MOTION FOR CONTEMPT REGARDING TRACY
KENNEDY'S FAILURE TO APPEAR FOR COURT ORDERED DEPOSITION AND
MOTION FOR LEAVE TO CONTINUE DEPOSITION BEYOND FACT DISCOVERY
DEADLINE**

NOW COMES the plaintiff, Encompass Insurance Company (hereinafter "Encompass"), and respectfully requests that this Honorable Court WITHDRAW plaintiff's Motion for Contempt filed against Tracy Kennedy in connection with her failure to appear for her court-ordered deposition (Docket #s 165-166). By agreement of counsel, Ms. Kennedy will appear for the continuation of her deposition. Specifically, Ms. Kennedy will be returning to this jurisdiction on or around November 20, 2007 (Thanksgiving). At such time, Ms. Kennedy will appear and testify pursuant to this Court's June 6, 2007 Order. See Re-Notice of Deposition, annexed hereto at Exhibit A.

According to this Court's January 11, 2007 Scheduling Order, fact discovery is set to close on November 13, 2007. In light of this deadline, Encompass respectfully requests leave of this Court to continue Ms. Kennedy's deposition beyond this deadline whereas: (1) Ms.

Kennedy's deposition was initially convened and suspended prior to the deadline; (2) Ms. Kennedy was ordered to appear and proffer testimony on all non-privileged issues; (3) Ms. Kennedy failed to appear at her duly noticed deposition on June 27, 2007; and (4) Ms. Kennedy has left the jurisdiction and will not be returning until after the close of fact discovery. As set forth in Encompass' Motion to Compel Ms. Kennedy's further deposition (Docket #s 117-118) and this Court's allowance thereof, Ms. Kennedy's testimony is relevant and reasonably likely to lead to the discovery of admissible evidence regarding the allegations set forth in Encompass' Second Amended Complaint. Encompass further maintains that the continuation of Ms. Kennedy's deposition will not prejudice the interests of any party in this matter.

WHEREFORE, for all the foregoing reasons, plaintiff, Encompass Insurance Company of Massachusetts, respectfully requests that this Honorable Court (1) **WITHDRAW** plaintiff's Motion for Contempt regarding Ms. Kennedy (Docket #s 165-166), (2) **GRANT** plaintiff leave to continue Ms. Kennedy's deposition beyond the November 13, 2007 fact discovery deadline, and (3) **ORDER** Ms. Kennedy to appear and continue her testimony on November 20, 2007.

Respectfully submitted,
Encompass Insurance Company,
By its attorneys,

/s/ Nathan A. Tilden

Richard D. King, Jr., BBO#638142
Nathan A. Tilden, BBO#647076
Michael W. Whitcher, BBO#663451
SMITH & BRINK, P.C.
122 Quincy Shore Drive
Quincy, Massachusetts 02171
(617) 770-2214

Dated: September 10, 2007

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ENCOMPASS INSURANCE COMPANY OF
MASSACHUSETTS,

Plaintiff-Counterclaim Defendant,

CIVIL ACTION NO.: 05-11693 RCL

vs.

JOSEPH D. GIAMPA, FREDERICK T. GIAMPA,
ADVANCED SPINE CENTERS, INC. d/b/a FIRST
SPINE & REHAB, FUTURE MANAGEMENT
CORPORATION, FUTURE MANAGEMENT
BUSINESS TRUST, EDWARD KENNEDY, BRIAN J.
CULLINEY, D.C. and JENNIFER McCONNELL, D.C.

Defendants-Counterclaim Plaintiffs.

RE-NOTICE OF TAKING DEPOSITION

To:

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Please take notice that at **10:00 am on Tuesday, November 20, 2007**, at the offices of **Smith & Brink, P.C., 122 Quincy Shore Drive, Quincy, Massachusetts 02171**, the plaintiff, Encompass Insurance Company, by its attorneys, will take the deposition upon oral examination of the witness, **Tracey Kennedy, 1 Lakeside Terrace, Westford, MA, 01824-1276, 99780 N. Bank Chetco River Road, Brookings, OR 97415, and/or c/o Lawrence E. Desilets, Esq. Liberty Plaza, 61 Nichols Road, Suite B5, Framingham, MA 01701**, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before a Notary Public or before some other officer authorized by law to administer oaths.

The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

The Plaintiff,
Encompass Insurance Company,
By its Attorneys,

Richard D. King, Jr. (BBO #638142)
Nathan A. Tilden (BBO #647076)
Michael W. Whitcher (BBO #663451)
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Dated: September 7, 2007